In the High Court of Uttaranchal, at Nainital.

Special Appeal No. 33 of 2005.

State of Uttaranchal, through the Secretary,
Medical Health & Family Welfare, Dehradun
and 3 others .. Appellants.

Versus

Peetar Luis and 9 others

Sri B.D. Kandpal, learned S.C. for the appellants.
Sri K.N. Joshi, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.

Hon'ble B.C. Kandpal, J.

Dated: 27-03-2006.

By way of this special appeal the judgment and order dated 7-8-2004 passed by the learned Single Judge of this Court in writ petition No. 203(S/S) of 2003 Peter Luis and others versus State of Uttaranchal, has been challenged.

2- Brief facts of the case are that the respondents were enrolled with the District Employment Office, Nainital and they were called for interview through said office to appear before the Selection Committee for job on the posts of daily wager class-IV employees. The respondents were appointed after selection on different dates between 6-10-1981 and 14-7-1989 by issuing appointment letters to them. The petitioners had been working continuously in Rajya Rakshalaya Sansthan, Patwadangar, District Nainital, which is under the control of Director, Medical, Health and Family Welfare of the State Government.

3- The Additional Director, who is head of the Institute, made several recommendations to the Director, Medical and Health Services for regularization of the respondents as class IV employees between the year 1992 and 1996 and in response to the said letter the State Government sought detailed information regarding vacancies. Again the Additional Director of the Institute requested for regularization of the respondents against the vacant class IV posts, but due to inaction of the State Government, the writ petition was filed before this court, seeking a writ in the

nature of mandamus directing the State Government to regularize
the services of the respondents on class-IV posts against the vacant lying posts of the Institute. Further the writ was also sought in the nature of mandamus directing the State Government to regularize the services of the respondents in view of the recommendations of the Additional Director, who is head of the Institute.

4- The counter affidavit was filed on behalf of the State Government/appellants, in which the objection was raised that the respondents should have approached the Public Service Tribunal. It was also averred in the counter affidavit that the respondents were appointed on daily wages. This fact has not been denied by the State Government/ appellants that the Additional Director, who is the head of the Institute, may send recommendations for regularization of the respondents.

5- Learned Single Judge of this Court after hearing the learned counsel for the parties and having perused the entire material on record was pleased to allow the writ petition and directed the State Government to regularize the services of the respondents forthwith in order of their seniority from the date vacancies in class-IV were available from them vide judgment and order dated 7-8-2004.

6- Feeling aggrieved by the aforesaid judgment, this special appeal has been preferred.

7- Heard the learned counsel for the parties and perused the record.

8- Perusal of the petition filed by the respondents earlier before this court shows that the respondents had alleged in the writ petition that in view of the Government Order dated 17-7-1991 and 26-9-1991, they are entitled to be regularized against the vacant class –IV posts as they were appointed prior to 29-6-1991. It was also arrived in the writ petition that out of ten, provident fund contribution of the five employees, was being deducted from their wages. It also reveals that in compliance of the interim order passed in the writ petition, the respondents filed representation, but the same was rejected on 25-6-2003.

9- The appellants have filed the order by which the representation of the respondents for regularization was rejected with their counter affidavit and the Government Order on the basis of which the representation was rejected was also filed along with the counter affidavit. This Government Order shows that the persons on daily wages should not be given salary equal to that of the regular employees merely because some persons who have obtained orders from the counter are being given minimum wages, particularly where the posts are not created. The learned Single Judge found that the ground for rejection of the representation, made by the respondents, was not reasonable because in the present case the respondents, who sought for regularization, were ten in number while there are eleven vacancies existing in the Institute.

10- We have also perused the copy of the letter No. G-7-1998-99, dated 1-12-1998 sent by Additional Director/Head of the Institute to the Director, Medical Health, Services, which is annexed as Annexure-11 to the writ petition, and which shows that there are eleven vacancies existing in the Institute.

11- We do not find any reason to descent with the view taken by the learned Single Judge in this regard.

12- Further the Additional Director of the Institute, who heads it, himself has made recommendations again and again for regularization of the respondents. Therefore, under these circumstances the respondents could not be left for exploitation even after twenty years of their services. Learned Single Judge has rightly observed that their services should have been regularized in view of the eleven vacancies available in the Institute as well as the recommendation of the Additional Director who is the head of the Institute.

13- We do not find any ground for interference in the impugned judgment passed by the learned Single Judge.

14- Accordingly the special appeal is dismissed.

(B. C. Kandpal, J.) **(P.C. Verma, J.)**

ISB